

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

H. RAY LAHR,

Plaintiff,

v.

NATIONAL TRANSPORTATION
SAFETY BOARD, et al.,

Defendants.

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) No. CV 03-09023-AHM(RZx)
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**SECOND DECLARATION OF TERRY N. BUROKER
INFORMATION REVIEW OFFICER
CENTRAL INTELLIGENCE AGENCY**

I, TERRY N. BUROKER, hereby declare and say:

1. I am the Information Review Officer (IRO) for the Directorate of Intelligence (DI) of the Central Intelligence Agency (CIA). My official responsibilities and authorities as IRO are described in paragraphs 1-3 of my Declaration dated

June 20, 2005, which I hereby incorporate by reference.

2. I make this Declaration in support of Defendants' Motion for Partial Summary Judgment as to the CIA. The purpose of this declaration is to supplement the CIA's interim response. It addresses additional releases and concerns raised by counsel for Plaintiff in the course of "meet-and-confer" discussions with counsel for Defendants. I make the following statements based upon my personal knowledge and upon information made available to me in my official capacity.

3. As indicated in note 5 of my June 20, 2005, declaration, the focus of the CIA inquiry on TWA Flight 800 was to determine what the eyewitnesses saw, not what caused the aircraft to explode. Based on NTSB and FBI findings, TWA 800 suffered a central fuel tank explosion, which caused the destruction of the Boeing 747.

4. Relying principally on materials furnished by the FBI, including eyewitness reports, radar tracking data and certain NTSB observations regarding the cockpit voice recorder and flight data recorder, CIA analysts were able to reconstruct the approximate flight path of TWA 800 from the instant its recordings ended until the aircraft struck the water. As part of that effort, CIA analysts concluded that just after the aircraft exploded, it pitched up abruptly and climbed from its last recorded altitude of approximately 13,800 feet to a maximum altitude of approximately 17,000 feet. This conclusion was consistent with information provided by NTSB investigators and Boeing engineers, who determined that the front third of the aircraft separated from the fuselage within four seconds after the aircraft exploded.

5. The CIA analysts further concluded that about 20 seconds after TWA 800 exploded, a fireball erupted and the aircraft went into a steep and

rapid descent, producing an increasingly visible fire trail. About 42 seconds after it exploded, the aircraft's left wing separated, releasing unburned fuel which subsequently ignited in a dramatic cascade of flames, and approximately 7 seconds later the burning debris hit the water.

6. CIA analysts concluded that the eyewitnesses did not see a missile. The eyewitness sightings of greatest concern--the ones which originally raised the possibility of a missile--took place after the aircraft exploded. CIA analysts concluded that what these eyewitnesses saw was the Boeing 747 in various stages of crippled flight. This conclusion was incorporated into a video produced by the CIA and shown to the public by the FBI on November 18, 1997. CIA subsequently obtained additional data from the NTSB and continued to refine its analysis. However, since the CIA's conclusion--that the eyewitnesses saw the

burning aircraft and not a missile--remained unchanged, a final report was not issued.

7. Certain of the records responsive to the Plaintiff's October 8, 2003, request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, are records created by federal agencies other than the CIA. The CIA referred these records to the originating agencies for review and direct response to Plaintiff. One document, consisting of 124 pages and containing eyewitness observations of the explosion of TWA 800, was recently returned by the FBI to the CIA for response to the Plaintiff. This document is addressed in paragraph 18.

8. The CIA has responded to Plaintiff's FOIA request by releasing some records in their entirety, denying some records in their entirety, and releasing some records in part with portions withheld under FOIA Exemptions (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7)(C). A true and correct copy of the records withheld in part, as released

to the Plaintiff, is attached hereto as Exhibit A.

For purposes of clarity, these records bear the following identification numbers:

| MORI Doc. ID No. | Doc. Index (DI) No. | DI Page No. |
|------------------|---------------------|---------------------------------|
| 1176341 | 1147307 | 41 |
| 1176342 | 1147315 | 42 |
| 1176343 | 1147318 | 43 |
| 1176344 | 1147334 | 44 |
| 1176345 | 1147335 | 45 |
| 1176347 | 1147336 | 46 |
| 1176348 | 1147338 | 47 |
| 1176349 | 1147340 | 48 |
| 1176350 | 1147342 | 49 |
| 1176351 | 1147348 | 50 |
| 1176352 | 1147324 | 51 |
| 1176353 | 1147339 | 52 |
| 1176354 | 1147341 | 53 |
| 1175601 | 1080902 | 54 |
| 1175603 | 1080903 | 55 |
| 1215200 | 1215200 | 60 |
| 1215201 | 1215201 | 61 |
| 1215202 | 1215202 | 62 |
| 1215016 | 1215016 | 64 |
| 1215018 | 1215013 | 66 |
| 1215014 | 1215014 | 67 |
| 1215016 | 1215015 | 68 |
| 1215017 | 1215017 | 69 |
| 1215018 | 1215018 | 70 |
| 1232319 | 1232319 | 16 (2 nd Bur. Decl.) |

| | | |
|---------|---------|---------------------|
| 1232320 | 1232320 | 17 (2nd Bur. Decl.) |
|---------|---------|---------------------|

9. The CIA has withheld the names of CIA personnel pursuant to Exemption (b)(3). See Buroker Decl., June 20, 2005, ¶¶ 27-28. I understand that Plaintiff claims that the CIA cannot withhold the name of an individual identified as a CIA analyst in a December 5, 2003, *Washington Times* article. According to the article, "CIA recently declassified a once-secret report on eyewitnesses to the crash of TWA Flight 800". The article states that "the CIA analyst ... won an intelligence medal for his work on the crash." Bill Gertz and Rowan Scarborough, *Inside the Ring*, *Wash. Times*, Dec. 5, 2003, at A6. Even if the individual whose name appears in the newspaper article and whose name reportedly appears in the "once-secret" report may be among the CIA personnel whose names are withheld from responsive documents, the "once-secret" report is not among

the documents that are responsive to Plaintiff's request and the CIA is not precluded from withholding the name from different documents that are responsive to the request, if the name appears therein. Of all the responsive documents from which the CIA has withheld the names of CIA personnel, none of these documents have been previously released to the public. Consequently, the association of any of these CIA personnel with the specific information contained in the responsive documents has not been officially disclosed.

10. The CIA has withheld an intelligence method from Doc. Index Nos. 1147307, 1147324, 1147336, and 117340, not an "intelligence source and/or method." See Doc. Index at 41, 46, 48, 51. The intelligence method was not involved in that portion of the analysis relating to "the flight path climb conclusion" which is the subject of Plaintiff's request.

11. The "CIA organizational data" that the CIA has withheld from Doc. Index No. 1147334 is the acronym of a CIA component, "not filing instructions of CIA internal components." See Buroker Decl. ¶ 31. The withholding from page 3 of Doc. Index 1147334 marked "(b)(3)" should also be marked "(b)(5)." Doc. Index No. 1147334 is a set of multiple analyst notes bearing the dates December 2-4, 1997, not merely the date December 4, 1997. See Doc. Index at 44.

12. The name of a "CIA employee/contractor" that the CIA has withheld from Doc. No. 1147338 is the name of an individual, not that of an entity. See Doc. Index at 47.

13. The "third party information (name and email address)" that the CIA has withheld from Doc. Index No. 1147340 is the name of an individual employed by a private company. See Doc. Index at 48. The assertion of Exemption 7(C) as to Doc. Index No. 1147340 should be disregarded. See *id.*

14. The Boeing employee whose name and telephone number has been withheld from Doc. Index No. 1215200 is the same Boeing employee whose name, facsimile number, and telephone number has been withheld from Doc. Index No. 1215013. See Doc. at 60, 66.

15. The "third party names and/or personal identifying information" withheld from Doc. Index No. 1215014 identified FBI personnel as well as eyewitnesses.

16. Doc. Index No. 1215197 has been withheld in its entirety, not withheld in part. See Doc. Index at 59. This document is a CIA analyst's handwritten notes containing intra-agency and inter-agency deliberations with NTSB, including the analyst's preliminary assessment, comments, and notations regarding select radar tracking data provided by NTSB.

17. Doc. Index No. 1215196 is 22 pages of

graphs and charts prepared by CIA analyst(s) containing intra-agency and inter-agency deliberations with NTSB, including analyst's selection of variables, assumptions, calculations, and graphical representations regarding analyst's preliminary analysis of radar tracking data provided by NTSB. See Doc. Index at 58.

18. Two documents, which also have been reviewed by the FBI, are released in part herewith (MORI Doc. ID No. 1232319 and 1232320).


Information was redacted from these documents by both the CIA and FBI. The withheld information is the names of CIA personnel, an FBI special agent (No. 123319), and eyewitnesses (No. 123320).

Attached are Document Disposition Index entries which further describe the documents and identify exemptions claimed.

* * * *

I hereby declare under penalty of perjury that
the foregoing is true and correct.

Executed this ____ day of August, 2005.



Terry N. Buroker
Information Review Officer
Directorate of Intelligence
Central Intelligence Agency